



**Legislative Bulletin..... October 12, 2011**

**Contents:**

**H.R. 3079** - United States-Panama Trade Promotion Agreement Implementation Act

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**H.R. 3079 - United States- Panama Trade Promotion Agreement  
Implementation Act (Cantor, R-VA)**

**Order of Business:** The bill is scheduled to be considered on October 12, 2011, under a closed rule, [H.Res. 425](#). The rule provides for 90 minutes of debate with 60 of those minutes equally divided, and 30 minutes controlled by Rep. Michaud (D-ME). No motion to recommit is provided for. Under Trade Promotion Authority (TPA) (Public Law 107-210), bills implementing trade agreements are not amendable (either in committee or on the House floor). More information on the legislation is below.

**Summary:** H.R. 3079 would implement the U.S. – Panama Trade Promotion Agreement, that was originally signed by the U.S. and Panama on [June 28, 2007](#). Panama approved the agreement on July 11, 2007. Most imports from Panama currently enter the U.S. market duty free under the Caribbean Basin Trade Partnership Act and they also have benefitted from the Generalized System of Preferences (GSP). This FTA would eliminate or substantially lower the tariffs on U.S. exports to Panama, leveling the playing field.

On April 13, 2011, Panama ratified the tax information exchange agreement (TIEA) with the United States. Panama approved the TIEA is the last item that U.S. officials have indicated should occur before the U.S. – Panama Free Trade Agreement is considered by the U.S. Congress. This agreement will close a tax reporting loophole that will result in better communication between the Panama government and the U.S. government (or specifically, the IRS). Free-trade advocates state this will help prevent tax cheating and money laundering, and they have called this the last major hurdle for the agreement. Passage of the TIEA is a major breakthrough to improve Panama’s reporting standards. On July 6, 2011, Panama was removed from Organization for Economic Cooperation and Development (OECD) “[grey list](#)” of tax havens.

**SUMMARY BY TITLE:**

**TITLE I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, THE AGREEMENT**

- Makes U.S. law paramount to any provision in the Agreement that conflicts with U.S. law. States that the Agreement would not modify or limit any authority conferred under any U.S. law.

- A state law that conflicts with any provision in the Agreement could only be declared invalid in an action brought by the United States Government
- Prevents private legal actions against any provision of the Agreement
- Authorizes the President to establish or designate an office within the Department of Commerce to handle disputes that could arise from the agreement. This office is authorized to be appropriated \$150,000 for each fiscal year.

## **TITLE II – CUSTOMS PROVISIONS**

- Allows the President to modify any tariffs or tariff-free treatment in the Agreement and to create additional tariffs as necessary (subject to certain limitations).
- Requires the President to terminate Panama’s designation as a beneficiary developing country for treatment under the Generalized System of Preferences, and as a beneficiary country for treatment under the Caribbean Basin Economic Recovery Act, once this agreement takes effect.
- Instructs the President, when implementing the agreement, to ensure that imports of agricultural goods do not disrupt the orderly marketing of commodities in the United States. According to the Committee Report, the provision is necessary to ensure United States compliance with the market access provisions of the Agreement. The Committee expects the President to comply with the letter and spirit of the consultation and layover provisions of this Act in carrying out section 201(b).
- Implements the agricultural safeguard measures of Article 3.17 and Annex 3.17 of the Agreement (which can be [found in detail here](#)).
- Rules of Origin:
  - Establishes the basis of any tariff classification is the [Harmonized Tariff Schedule \(HTS\)](#).
  - Considers a good an “originating good” if that good was wholly obtained or produced in its entirety in the territory of Panama, or the United States, or both. Originating goods are the goods that receive preferential treatment under the agreement.
  - Clarifies that in order to meet the rules of origin, an apparel product must “have been cut (or knit to shape) and sewn or otherwise assembled in Panama, the United States, or both from yarn, or fabric made from yarn, that originates in Panama, the United States, or both.”
  - Includes the costs of freight, insurance, packing, and other such transportation costs, as well as duties, taxes, customs fees, and spoilage in the calculation of value of an originating material.
  - Also includes the cost of duties, taxes, and customs brokerage fees on the material paid in the territory of Panama, the United States, or both, other than duties or taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable.
  - Allows for certain textiles or apparel goods to be considered an “originating good,” as long as the total weight of all nonoriginating fibers in such a good does not exceed 10% of its total weight.
  - Requires that a person’s selected inventory method be used consistently without change throughout a fiscal year. The inventory management method could mean “averaging,” “last-in, first-out,” “first-in, last-out,” or any other method otherwise accepted by that country.

- Excludes packing materials and shipping containers when determining whether a material is an “originating material” or a good is an “originating good.”
- Defines numerous operative terms, including and especially “good wholly obtained or produced entirely in the territory of Panama, the United States, or both,” for the purposes of the preferential tariff treatment under the Agreement.
- The legislation amends U.S. Code to clarify that “No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Panama Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.”
- Shields an importer from penalties for making an incorrect claim of a qualifying originating good if he “promptly and voluntarily” makes a corrected declaration and then pays any duties owed. Exporters would be similarly shielded if they voluntarily provide written notice of any incorrect informant to every person to whom the original certification of a qualifying originating good was made.
- The agreement allows the President to suspend the entry of certain textiles that are under verification to qualify the agreement’s Rules of Origin.
  - Allows the President to deny the preferential treatment of certain textiles that may not meet the rules of origin requirements under this agreement.
- Establishes recordkeeping requirements of goods exported that receive preferential treatment under this agreement.

### **TITLE III—RELIEF FROM IMPORTS**

- Authorizes the filing (with the U.S. International Trade Commission) by an entity, including a trade association, firm, certified or recognized union, or group of representative workers, of a petition requesting adjustment to the obligations of the United States under the Agreement (and asking for provisional relief). The Commission would then have to investigate whether “a substantial cause of serious injury or threat thereof to [a] domestic industry” is occurring as a result of the U.S.-Panama Trade Promotion Agreement (subject to certain exceptions).
- If the Commission finds injury or threat of injury, it would then have to recommend the amount of import relief necessary to correct or prevent harm. Further, the Commission would have to facilitate the efforts of the domestic industry to make a “positive adjustment to import competition.”
- The President would not have to provide the suggested import relief, if doing so would have greater economic and social costs than benefits.

### **TITLE IV—MISCELLANEOUS**

- Removes Panama from the list of countries eligible for designation as a beneficiary country under the Caribbean Basin Economic Recovery Act. Panama is currently a beneficiary under CBERA, and receives preferential trade treatment on certain goods when entering the United States.
- Extends the passenger and conveyance processing fees authorized under Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 through September 30, 2021.

**Additional Information:** More information from the Ways and Means Committee can be [viewed here](#).

To read the text of the agreement, see this page:

<http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/final-text>

For a brief summary from the U.S. Trade Representative's office, see this page:

<http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa>

Additional information from the Heritage Foundation can be found here:

[U.S.–Panama Free Trade Agreement: Drop the Tariff Anchor](#)

[FTAs with South Korea, Colombia, and Panama Would Create U.S. Jobs and Exports](#)

[Enhance U.S. Security: Pass Free Trade Agreements with Colombia, Panama, and South Korea](#)

[Panama and Obama's Latin America Policy: Time to Close Ranks and Support A Friend](#)

Additional information from the U.S. Chamber of Commerce can be found here:

[Myths and Facts: Trade Agreements, Deficits, Jobs, and Growth](#).

**State-by-State Impact:** The below outside groups have released state-by-state data below regarding the impact of the pending free trade agreements.

The **U.S. Chamber of Commerce** launched [Trade Supports Jobs](#). This website gives a state-by-state breakdown of U.S. exports and the jobs they support.

The **Business Roundtable** unveiled the [Impact of Trade in the United States](#) which tracks U.S. exports on a state-by-state basis. It also individually lists exporting businesses, their products, and the foreign markets they export to.

The **American Farm Bureau** launched [this page](#) that details on a state-by-state basis the impact of these three agreements on U.S. agricultural exports. This website lists the states' individual agricultural products and their impact under the agreements.

The **International Trade Administration** released state-by-state data towards the bottom of [this page](#).

### **Sector by Sector Impact:**

**Agriculture:** The American Farm Bureau [estimates](#) that this agreement could mean increased U.S. agricultural exports to Panama of more than \$46 million per year by full implementation. Panama is currently a beneficiary of the Caribbean Basin Economic Recovery Act (CBERA) and currently receives preferential treatment to the U.S. market for agricultural products. This agreement will level the playing field and provide U.S. exporters comparable access that Panamanian exporters already enjoy in the U.S. market.

According to [House Report 111-238](#): "U.S. agriculture exports to Panama currently face an average tariff of 15 percent, whereas more than 99 percent of Panamanian agricultural exports to the United States enter duty-free. The Agreement would remedy this by making more than half of current U.S.

farm exports to Panama by value duty-free immediately upon implementation, including U.S. exports of pork, rice, soybeans, cotton, wheat, and most fresh fruit. The Agreement would also address key non-tariff barriers. For example, Panama would recognize the equivalence of the U.S. food safety system for meat, poultry, and processed foods and would provide access for all U.S. beef and beef products consistent with international norms.”

**Manufacturing:** According to [House Report 111-238](#): “The Agreement would significantly lower both tariff and non-tariff barriers to U.S. exports of manufactured goods. Upon implementation, over 87 percent of U.S. exports of consumer and industrial products to Panama would immediately become duty-free, with remaining tariffs phased out over ten years. Key U.S. export sectors that would receive immediate duty-free treatment include aircraft, construction equipment, and medical and scientific equipment. As a result, the ITC estimates significant gains in U.S. exports in key sectors and products. For example, the ITC estimates that exports of cars and light trucks would increase by 43 percent. Similarly, exports of appliances, HVAC equipment, and parts would increase between 9 and 20 percent. Per the Agreement, Panama has also reaffirmed its commitment to fulfill its obligations under the WTO Information Technology Agreement, which would further open Panama's market to U.S. high-tech exports. The Agreement would provide U.S. firms with lower tariff barriers than major competitors from countries that do not have trade agreements with Panama in effect.”

Additional information according to [House Report 111-238](#): “U.S. industrial goods currently face an average tariff of 7 percent in Panama, with some tariffs as high as 81 percent. Conversely, almost all Panamanian exports enter the United States duty free due to low U.S. tariffs and U.S. trade preference programs. The Agreement would transition the U.S.-Panama trading relationship from one-way preferences to full partnership and reciprocal commitments, helping U.S. exporters gain greater access to the Panamanian market, one of the fastest growing in Latin America. The International Trade Commissions (ITC) estimates that U.S. exports to Panama for certain sectors would increase up to 145 percent.”

**Services:** According to [House Report 111-238](#): “The services sector accounts for nearly 78 percent of Panama's GDP, making improved market access for U.S. services critical. The Agreement would provide U.S. service firms with market access, national treatment, and regulatory transparency exceeding that afforded by the WTO General Agreement on Services. Under the Agreement, the United States would receive access to key services markets, including retail trade, financial services, and professional services. For example, the agreement would end the current Panamanian restriction allowing only Panamanian nationals to provide professional services. In addition, the Agreement would ban the current requirement of having to open a subsidiary in Panama to do business in Panama. U.S. service providers that establish a local presence in Panama would benefit from strong investor protections included in the Agreement. In addition, the Agreement would lift the cap on foreign direct investment in multi-brand retail in Panama. Overall, the opening of Panama's services market would allow U.S. service providers to benefit in the region, as well as Panama, because Panama is considered a prime logistical hub for the whole of Latin America.”

**Government Procurement and Canal Expansion:** According to [House Report 111-238](#): “The government procurement provisions of the Agreement are essential to guaranteeing non-discriminatory access for U.S. goods, services, and suppliers to the Panamanian central and regional governments, as well as to significant government enterprises, including the Panama Canal

Authority, particularly because Panama is not a member of the WTO Government Procurement Agreement. The procurement provisions would grant U.S. entities greater access and protection than they currently have. The Canal expansion now underway is expected to double capacity with a third lane and a new set of locks. The expansion will total \$5.25 billion in new contract opportunities. In addition to the Canal expansion, upcoming procurement opportunities in Panama are expected to be between \$1.5 billion and \$2.3 billion.”

**Intellectual Property Rights:** According to [House Report 111-238](#): “Under the Agreement, Panama would adopt higher and extended standards for the protection of intellectual property rights, such as copyrights, patents, trademarks and trade secrets. The Agreement also provides enhanced means for enforcing those rights. Under the Agreement, each partner country would be required to grant national treatment to nationals of the other, and all laws, regulations, procedures and final judicial decisions would need to be in writing and published or made publicly available. The Agreement would lengthen terms for copyright protection, cover electronic and digital media, and increase enforcement to go beyond the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. Both parties would be obliged to provide appropriate civil and criminal remedies for willful violators of intellectual property rights.”

**Textile and Apparel:** According to [House Report 111-238](#): “Many U.S. textiles and apparel products meeting the Agreement's rules of origin would immediately become duty-free and quota-free when exported to Panama. The Agreement's rules of origin are generally based on the ‘yarn forward’ standard. A ‘de minimis’ provision would allow limited amounts of specified third-country content to go into U.S. and Panamanian apparel, giving producers in both countries needed flexibility. The Agreement would allow the use of ‘short supply’ fabrics, yarns, and fibers (that is, fabrics, yarns, and fibers not made in Panama or the United States that have been determined not to be commercially available in either country) as inputs. The Parties agreed to a list of short supply fabrics, yarns, and fibers, and the Agreement includes a process for adding more.”

**National Security:** As the [U.S. Chamber](#) has submits, implementing free trade agreements deepens out relationship with global partners. President Obama's National Security Adviser, Tom Donilon has stated in the [Wall Street Journal](#), “passing them is a matter of national security... These agreements will also help strengthen our economic and commercial presence in Asia and Latin America, two regions where we have been strategically underweighted. We have fought to reinvigorate our partnerships with countries in these regions over the past few years, and closer economic ties are a key component of this effort.”

**Committee Action:** On July 7, 2011, the House Ways and Means Committee held a non-markup considering the draft implementation of the U.S. Panama Trade Promotion Agreement. The non-markup provided the committee the opportunity to relay the views of the Committee to the Administration so that issues and concerns can be addressed before President Obama’s Administration formally submitted to Congress legislation implementing the trade agreements.

The Administration submitted this trade agreement to Congress on October 3, 2011. The legislation to implement the trade agreement was introduced as H.R. 3079 and was referred to the House Ways and Means Committee. On October 5, 2011, the House Ways and Means Committee held a markup and the legislation was approved by a [vote of 32-3](#).

**Outside Groups:** On October 3, 2011, the following groups [sent this letter](#) to House and Senate Leadership urging passage of the United States-Panama Trade Promotion Agreement:

American Farm Bureau Federation	National Grape Cooperative Association Inc.
American Feed Industry Association	National Meat Association
American Frozen Food Institute	National Milk Producers Federation
American Meat Institute	National Oilseed Processors Association
American Peanut Product Manufacturers, Inc.	National Pork Producers Council
American Potato Trade Alliance	National Potato Council
American Seed Trade Association	National Renderers Association
American Soybean Association	National Sorghum Producers
Blue Diamond Growers	National Sunflower Association
California Cherry Export Association	National Turkey Federation
California Pear Growers	North American Equipment Dealers Association
California Table Grape Commission	North Dakota Grain Growers Association
Cargill, Incorporated	Northwest Dairy Association/Darigold
Campbell Soup Company	Northwest Horticultural Council
Commodity Markets Council	Ocean Spray Cranberries, Inc.
ConAgra Foods, Inc.	Oklahoma Wheat Growers Association
Corn Refiners Association	Pet Food Institute
Dairylea Cooperative Inc.	Produce Marketing Association
Distilled Spirits Council of the United States	Seaboard Foods
Equity Cooperative Livestock Sales Association	Smithfield Foods
Grocery Manufacturers Association	South Dakota Wheat Inc.
Hormel Foods Corporation	Texas Wheat Producers Association
International Dairy Foods Association	Tyson Foods, Inc.
Idaho Grain Producers Association	U.S. Apple Association
JBS USA	U.S. Canola Association
Kansas Association of Wheat Growers	U.S. Dairy Export Council
Kentucky Small Grain Growers Association	U.S. Meat Export Federation
Kraft Foods	U.S. Premium Beef
Land O'Lakes, Inc.	United Egg Association
Montana Grain Growers Association	United Egg Producers
National Association of State Departments of Agriculture	United Producers, Inc.
National Association of Wheat Growers	US Dry Bean Council
National Barley Growers Association	US Wheat Associates
National Cattlemen's Beef Association	USA Dry Pea & Lentil Council
National Chicken Council	USA Poultry & Egg Export Council
National Confectioners Association	Washington State Potato Commission
National Corn Growers Association	Welch Foods Inc.
National Council of Farmer Cooperatives	Western Growers Association
National Grain and Feed Association	Sweetener Users Association
	USA Rice Federation

Additionally, the Latin America Trade Coalition has combined [this list of over 1,200 organizations](#) supporting the U.S. Colombia and Panama Trade Agreements.

**Outside Groups Supporting:**

The Club for Growth – [scoring as a key vote](#)  
Heritage Action for America – [scoring as a key vote](#)  
U.S. Chamber of Commerce – [scoring as a key vote](#)  
Council for Citizens Against Government Waste – *scoring as a key vote*

**Administration Position:** The Administration strongly supports H.R. 3079, which approves and implements the United States–Panama Trade Promotion Agreement, signed by the United States and the Republic of Panama on June 28, 2007.

**Trade Promotional Authority (TPA):** These trade agreements are coming to the House floor under the Trade Promotional Authority (TPA). TPA is a fast-track authority that allows the Administration to negotiate the trade agreements, prohibits Congress from amending the agreements, and calls for limited floor debate. These agreements need a simple majority to pass both the House and the Senate. TPA expired on July 1, 2007, but because these agreements were signed before the expiration they are allowed to come to the Congress under that authority.

While Congress cannot be alter trade agreements negotiated between foreign nations and the Administration after the Administration submits them for congressional consideration, it is responsible for defining trade negotiation objectives in TPA legislation. These objectives are definitive statements of U.S. trade policy, and the Administration is expected to pursue these objectives during trade negotiations if they intend to have the trade agreement brought to Congress under this expedited procedure. For more information on Trade Promotion Authority and the Role of Congress in Trade Policy, see this [CRS Report](#).

**Cost to Taxpayers:** The Congressional Budget Office (CBO) and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 3079 would increase revenues by \$118 million in 2012 but would reduce revenues by \$6 million over the 2012-2021 period. CBO estimates that enacting H.R. 3079 would increase direct spending by \$1 million in 2012 but would decrease direct spending by \$8 million over the 2012-2021 period. Thus, the net impact of those effects is an estimated reduction in deficits of \$2 million over the 2012-2021 period. CBO’s report can be [viewed here](#).

**Does the Bill Expand the Size and Scope of the Federal Government?:** No, the legislation would implement free trade agreements that would reduce government involvement in, and taxation of, trade between the United States and the territory of Panama.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** CBO has determined that the nontax provisions of H.R. 3079 would impose private-sector mandates, as defined in UMRA, by extending the customs user fees and by enforcing new recordkeeping requirements on exporters of goods to Panama. CBO estimates that the aggregate costs of those mandates would not exceed the annual threshold established in UMRA for private-sector mandates (\$142 million in 2011, adjusted annually for inflation). JCT has determined that the tax provision of H.R. 3079 contains no private-sector mandates as defined in UMRA.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** [House Report 111-238](#) states that “the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.”

**Constitutional Authority:** Rep. Cantor’s statement of constitutional authority, found in the [Congressional Record](#), states that “Congress has the power to enact this legislation pursuant to the

following: Article I, Section 8, Clause 1 (the power to lay and collect duties and imposts) and Article I, Section 8, Clause 3(the power to regulate commerce with foreign nations.”

**RSC Staff Contact:** Curtis Rhyne, [Curtis.Rhyne@mail.house.gov](mailto:Curtis.Rhyne@mail.house.gov), (202) 226-9717.